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The opinion in support of the decision being entered today was **not** written for publication
and is **not** binding precedent of the Board.

Paper No. 21

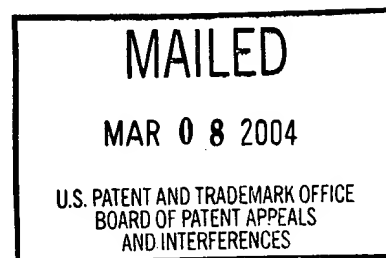
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MASAHIDE HIO and EIJI KOJIMA

Appeal No. 2003-2081
Application No. 09/893,931

HEARD: February 17, 2004



Before KRASS, BARRETT, and DIXON, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 9 and 12-14, which are all of the claims pending in this application.

We **AFFIRM**.

Appellants' invention relates to an insulation-displacement terminal fitting. An understanding of the invention can be derived from a reading of exemplary claim 9, which is reproduced below.

9. An insulation-displacement terminal fitting, comprising: a base wall, first and second opposed side walls projecting from opposite sides of the base wall and defining a wire-receiving space between the side walls, first and second opposed V-shaped insulation-displacement portions projecting respectively from the first and second side walls into the wire-receiving space, first and second substantially planar locks projecting respectively from the first and second side walls into the wire-receiving space in positions spaced from the insulation-displacement portions, said planar locks being aligned substantially normal to the respective side walls, said first and second locks being formed respectively with first and second edges defining portions of the first and second locks-furthest from the respective first and second side walls, whereby a wire can be inserted into the wire-receiving space sufficiently for cutting a resin coating of the wire by projecting ends of the insulation-displacement portions and bringing a core of the wire into contact with the projecting ends of the insulation-displacement portions, and wherein the edges of the locks bite into at least the resin coating for resisting a pull out force on the wire.

The prior art of record relied upon by the examiner in rejecting the appealed claims is as follows:

Hoppe, Jr.	3,867,005	Feb. 18 1975
McKee et al. (McKee)	4,040,702	Aug. 9, 1977
Endo et al. (Endo)	5,934,928	Aug. 10, 1999

Claims 9 and 12-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hoppe, Jr. in view of McKee and Endo.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 14, mailed Feb. 25, 2003) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 13, filed Dec. 9, 2002) and reply brief (Paper No. 16, filed Apr. 30, 2003) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we note that appellants have elected to group all the claims as standing or falling together. (See brief at page 4.) Therefore, we will address appellants' arguments with respect to the sole independent claim 9.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d

1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in art would

lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) .

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations set forth in independent claim 9.

From our review of the examiner's rejection, we agree with the examiner and find that the examiner has initially established a *prima facie* case of obviousness of the invention as recited in the language of independent claim 9. (See answer at pages 3-7.)

Appellants argue that Hoppe, Jr. does not adequately restrict loose longitudinal movement of the wire that could be generated in response to longitudinal forces

exerted on the wire. (See brief at page 5.) We find no express or implied support for appellants' specific argument to longitudinal movement and longitudinal forces.

Therefore, this argument is not persuasive.

Appellants argue that the insulation-displacement portions 99 and 100 in Fig. 8 of Hoppe, Jr. have virtually the same shape and the same wire engagement characteristics as the insulation-displacement portions disposed more forwardly on the Hoppe, Jr. terminal fitting. (See brief at page 5.) We find no support for appellants' conclusion and appellants do not cite any specific portion of Hoppe, Jr. to support this argument. While appellants' speculation appears to be reasonable interpretation of the brief disclosure of Hoppe, Jr., appellants have presented no extrinsic evidence to support this speculation. Therefore, this argument is not persuasive. Appellants argue that the insulation-displacement portions 99 and 100 in Fig. 8 are not resistant to pulling forces and permit loose movements of the wire in response to pulling forces. (See brief at page 6.) Again, we find no support for appellants' argument in the language of independent claim 9 whereas elements 99 and 100 in Fig. 8 are shown contacting the conductor and therefore apply some level of pressure thereagainst which would resist a longitudinal force. Additionally, the language of independent claim 9 does not recite the type or extent of forces applied against the wire. Therefore, this argument is not persuasive.

With respect to McKee, appellants argue that McKee does not discuss the planar elements relied upon by the examiner and that the inventor prepared a sketch in the brief at page 7 that shows "the only plausible function of the structures." Here we find that the sketch and conclusion are a hearsay statement/conclusion which is not attested to by appellants' counsel, but is made by the inventor. Therefore, we are unsure if appellants' counsel or the inventor is attesting to this argument. Therefore, this argument is not persuasive. Appellants argue that these unnumbered structures in McKee will return towards their undeflected condition and will prevent vertical movement normal to the longitudinal direction. We find no support for appellants' argument with respect to the direction of movement. Appellants argue that the unnumbered elements have not effect at all on the longitudinal forces exerted on the wire. (See brief at page 6.) We disagree with this conclusion since if there is any contact with the wire, there would be a frictional component in the longitudinal direction. With this said, we find no limitation in the language of independent claim 9 with respect to a longitudinal force. Here, restraint in the vertical direction is sufficient.

With respect to Endo, appellants argue that Endo addressed the deficiencies in the "Hoppe, Jr.-type" insulation-displacement portions and that Endo concludes that "the forces holding the covered electric wire is weak" when subjected to an axial force. (See brief at page 7.) First, we do not find support for appellants' argument at the stated location in Endo, but do find support at column 2, lines 33-35. Second, we find

no correlation of the asserted argument to the language of independent claim 9 since there is not an amount or directional statement of the force. Third, the discussion in Endo is directed to a similar yet different structure than Hoppe, Jr. Therefore, this argument is not persuasive. The examiner maintains that the teachings of Endo are relied upon to teach and suggest the proposition that planar wire locks are good for securing the wire and prevent pulling forces. (See answer at page 5, Endo at col. 6, lines 50-58; col. 7, lines 45-50; and col. 8, lines 1-10.) We agree with the examiner.

Appellants argue that there is nothing in any of the references that suggests the hypothetical combination and that the hypothetical combination would not suggest the invention as defined by the claims. (See brief at page 8.) In appellants' discussion of the combination, appellants again rely upon the Endo discussion of "Hoppe, Jr.-type" insulation-displacement portions and the differences between these two types of connectors and conclude that the Endo would find the teachings of Hoppe, Jr. unacceptable and therefore teaches away from Hoope, Jr. While we agree with appellants that a similar type of connector is discussed in Endo to that connector specifically taught by Hoppe, Jr., we do not find this alone to be a specific "teaching away" from the specific embodiment taught by Hoope, Jr.

Appellants argue that McKee does not add anything to the combination and that the planar structure of McKee does not "cut into the insulation" and would not perform its intended function if changed. Here, we note that the locks need only "bite" into the

insulation and need not "cut" as argued by appellants. Here, we find that the locks of both Hoppe, Jr. and McKee provide some level of "bite" into the wire. The examiner maintains that the rejection does not suggest that the orientation of the locks (elements 99 and 100 in Fig. 8) in Hoppe, Jr. be changed. (See answer at page 5.) Additionally, we find that the locks of Hoppe, Jr. and the locks of McKee would provide some degree of restraint/pressure against longitudinal forces.

Appellants argue that the combination of Hoppe, Jr. and Endo would require the skilled artisan to "go precisely against the teachings of both references." (See brief at page 9.) We do not find that the combination as advanced by the examiner would require the skilled artisan to go precisely against the teachings of both references.

Appellants argue that none of the references discloses or suggests the various limitations with respect to the structure of the locks. (See brief at pages 9-10.) As discussed below, we find that Endo teaches substantially planar locks which are substantially perpendicular to the side walls and these locks having "edges," side edges, or "edge faces" which define portions of the locks furthest from the side walls which contacts the wire.

Appellants argue that none of the references disclose or suggest the various limitations with respect to the structure of the locks in combination with the V-shaped insulation-displacement portions. (See brief at page 10.) The examiner maintains that McKee discloses and suggests that both V-shaped insulation-displacement portions

and locks may both be implemented in the structure of a connector. We agree with the examiner.

Appellants argue that the examiner has based the rejection upon improper hindsight and that the examiner has picked and chosen elements in the references. (See brief at page 10.) The examiner maintains that the improper hindsight has not been used in the rejection and the examiner has provided teachings and lines of reasoning for the combination of teachings. We agree with the examiner and find that the examiner has provided reasoned statements for the combination which appellants have not adequately shown error in or presented evidence to the contrary. Therefore, this argument is not persuasive.

Appellants argue that Hoppe, Jr. discloses elements 92 and 93 as "detents" which spread apart the insulation from the conductor and that end "detents" 99 and 100 would perform similar functions to cut the insulation and spread the insulation apart from the conductor. (See reply brief at page 2.) We find that "detent" is defined as a part of a mechanism that stops or releases a movement. Webster's New Universal Unabridged Dictionary, Deluxe Second Edition p. 496 (1979). Additionally, appellants argue that the "V" shaped detents do not exhibit a good resistance to pulling forces on the wire [in a direction parallel to the wire] and for this reason detents 99 and 100 are clearly not "locks." We disagree with appellants and find that the term "lock" has not been specifically defined in appellants' specification. Therefore, we look to the same

dictionary used above and find that a "lock" may defined as "anything that fastens something else and prevents it from opening, turning, etc." Webster's New Universal Unabridged Dictionary, Deluxe Second Edition p. 1061 (1979). Similarly, we look to the same dictionary at page 188 wherein "bite" is defined as "to take fast hold of; to grip or catch into or on." While appellants argue that the V-shaped contacts of Hoppe, Jr. do "not exhibit good resistance to pulling forces" (see reply brief at page2), we find that this is an admission that these V-shaped contacts do fasten the connector to the wire, but that it does not perform this function to forces as high as desired. Therefore, we find that the detents 99 and 100 would be "locks" and that they "bite" into the insulation, but not as strong as appellants may desire. Nonetheless, they are "locks."

Appellants argue that the examiner's reliance upon Endo is in error and that the "structure of Endo et al. is formed so that a plated surface (not an edge) of Endo et al. cuts into the insulation and contacts the core. Fig. 6 clearly shows that the press-connecting blade 41a, 41b are cut only a shallow distance into the insulation and present a curved plated surface of contact to the conductor." (See reply brief at pages 3-4.) Appellants argue that "[a]gain, it is noted that the Examiner refers to 'planar wire locks' of Endo et al. However, as shown above, the elements 41a and 41b are not planar, and Endo et al. does [sic, do] not refer to those structures as locks." (See reply brief at page 4.) Additionally, we note that the portion of Endo cited by appellants in the brief at page 8 uses the terms "edge face" in describing the contact portion of the

connecting faces 31 and 32. Here again, we turn to the dictionary to define “edge” as the abrupt border or margin of anything; the part nearest some limit. Webster’s New Universal Unabridged Dictionary, Deluxe Second Edition p. 576 (1979). We have employed the above definitions of the terms “lock” and “edge” since appellants have not identified any specific definitions in the specification for these terms. Using these definitions and the specific limitations recited in the language of independent claim 9, we note that the language of claim 9 recites

first and second substantially planar locks projecting respectively from the first and second side walls into the wire-receiving space in positions spaced from the insulation-displacement portions, said planar locks being aligned substantially normal to the respective side walls, said first and second locks being formed respectively with first and second edges defining portions of the first and second locks furthest from the respective first and second side walls. (Emphasis added.)

In the language used in independent claim 9, we note that the locks need only be “substantially planar.” We look to the specification for a definition, but we do not find a definition of “substantially” planar in appellants’ specification, therefore we find that elements 41a and 41b of Endo are substantially planar, substantially normal to the side walls and displaced from the insulation-displacement portions and contact the wire at the furthest edge of the lock from the sidewall. Here, the language of the claims does not recite that the contact must be the distal end of the substantially planar lock or that the lock must be completely planar or perpendicular to the wire. We find that as long

as the lock is not a completely curved surface that the multiple planes taught by Endo would have been substantially planar since the claim does not recite substantially a single plane. Here we find the examiner's rejection to be based upon the breadth of appellants' claimed invention. Appellants have neither argued nor identified any specific definitions in the specification or in the relevant art which would limit the examiner's broad interpretation of these claim limitations.

Appellants argue that "neither of the references [Hoppe, Jr. and Endo] teaches planar locks normal to the side walls and having first and second edges for cutting the insulation." (See reply brief at page 5.) While this level of specificity may have been desired by appellants in the language of independent claim 9, appellants claim language does not support such a specific argument, as discussed above. Therefore, this argument is not persuasive.

With respect to McKee, appellants argue that McKee does not use the term lock to describe the structures that resiliently trap the wire in the terminal fitting and that these bent elements must be flexible to perform their apparently intended function and must be constructed to avoid cutting into the wire. (See reply brief at page 5.) Appellants refer to the annotated figure of McKee in the principal brief where appellants have included drawings made by the inventor, but these drawings are hearsay testimony as an opinion by the inventor rather than by counsel. We have discussed the teachings of McKee above and the argument based upon this hearsay cannot be

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persuasive. Therefore, we find that appellants have not shown error in the examiner's ***prima facie*** case of obviousness, nor have appellants' presented adequate evidence to rebut the examiner's ***prima facie*** case of obviousness. Therefore, we will sustain the rejection of independent claim 9 and dependent claims 12-14 which appellants have elected to group with claim 9.

CONCLUSION

To summarize, the decision of the examiner to reject claims 9 and 12-14 under 35 U.S.C. § 103 is affirmed.


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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED


ERROL A. KRASS
Administrative Patent Judge


LEE E. BARRETT
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge

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